IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of Case

W.P. No. 36 (M/S) 2002, decided on 01.09.2003

Smt. Krishna Devi W/o Shri Ram Kumar ---------- Petitioner

Versus

Rent Control and Eviction Officer, Dehradun and another ----- Respondents

A.F.R. (Approved for reporting)

~~Not approved for repo~~rting

Date 01-09-2003. Initials of Judge

Note – Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 36 (M/S) of 2002

Smt. Krishna Devi W/o Shri Ram Kumar,
R/o 23/1, Paltan Bazar, Dehradun. …….. Petitioner.

Versus

1. Rent Control and Eviction Officer, Dehradun
2. Shri Rajesh Kumar S/o Shri Tula Ram
   R/o 16, Banarsi Dass Quarters, Dehradun.

…….....Respondents

Hon'ble Rajesh Tandon,J.

By the present writ petition the petitioner has challenged the order dated 7.1.2002 passed by the R.C. & E.O. declaring the vacancy in respect of the premises No. 23/1 old and 25 New Paltan Bazar, Dehradun. The premise consists of one room on the ground floor, covered verandah, latrine and bathroom, which is in occupation of the petitioner Smt. Krishna Devi.

The brief facts giving rise to the present writ petition are that one Sri Tula Ram the father of the respondent no.2 namely Sri Rajesh Kumar and Sri Ram Kumar the husband of the petitioner were real brothers. They were carrying on business in a shop situated at 23/1, Paltan Bazar, Dehradun under the name and style of Bankey Lal & Sons and in the back of side there was residential accommodation consisting of one room, covered verandah, latrine and bathroom where Shri Ram Kumar alongwith his family members were residing. The petitioner has stated that her husband Sri Ram Kumar expired on 13th February, 1977 and she is continuously residing therein. Before the death of Sri Ram Kumar it was alleged that the shop was taken on rent by both the brothers jointly and Sri Tula Ram the elder brother of Sri Ram Kumar was the head of the family. After the death of Shri Ram Kumar the said shop was purchased

by Sri Tula Ram on 30.4.1997. After getting the sale deed an application was moved under Section 16(1) (b) of U.P. Act no. 13 of 1972 on the ground that the petitioner was in unauthorized occupation of the portion of the residential premises and has also sought the release of the accommodation.

The R.C. & E.O. has directed for inspection of the premises on 8.10.1998. The vacancy of the premises was declared on 7.1.2002. The present writ petition has been filed challenging the order dated 7.1.2002 passed by the R.C. & E.O.

Heard the learned counsel for the petitioner Sri V.K.Kohli as well as the counsel for the respondent Sri R. Dobhal at great length.

On submissions of the learned counsel for the parties following points arose for determination in the present writ petition.

(i) The vacancy of the residential premises cannot be declared as the entire premises in possession of the petitioner.

(ii) No vacancy can be initiated as the remedy is by way of suit only as the petitioner is unauthorized occupant.

(iii) Provisions of the Rule 8 (2) of U.P. Act 13 of 1972 has not been complied with.

I have perused the writ petition, counter affidavit as well as rejoinder affidavit. The writ petition was filed on 28.2.2002 and other was made Issue notice to the respondents and thereafter parties have exchanged their affidavits. After the exchange of the affidavits the parties have agreed that writ petition itself any be heard finally. On 30.6.2003. Hon'ble Acting Chief Justice has passed the following order.

"List on 10.7.2003 at the joint request of learned counsel for parties." Thereafter the matter was argued by both the parties for final disposal.

Findings:

Point No.1

From the pleadings of the parties I find that an application was filed under Section 16(1) (b) of U.P. Act 13 of 1972 stating therein that the petitioner was an unauthorized occupant in as much as the petitioner is residing at 17 Gurgaon House No. 497 at Haryana. It was stated that the petitioner is an unauthorized occupant as he has occupied the premises after 5th July 1976.

The petitioner has resisted the said application by filing the objections. It was stated by the petitioner that the provisions of Rule 8(2) of U.P. Act 1972 has not been complied with as the landlord has wrongly mentioned that the petitioner is residing at Gurgaon. In fact she is residing at the disputed place since 1973 and the education of children was also completed in the premises in dispoute.

In the counter affidavit it was stated by the counsel for the landlord that it was denied that she is residing in the premises in dispute and in fact she is permanently residing with her son at Gurgaon, Haryana. The present premises has been occupied by her daughter Smt. Asha Devi. The respondent has also filed the copy of the invitation card showing that the petitioner is residing at Gurgaon.

The petitioner has filed a rejoinder affidavit denying the fact that he is residing with her son in Gurgaon or Smt. Asha Devi, daughter of petitioner is residing in the premises. It was stated that so far as the wedding card is concerned, the same was got printed and issued by Smt. & Shri Raj Mohan Srivastava and the name of petitioner was shown as the mother of Shri Sanjay Kumar, who is working in Gurgaon and her name as per the custom prevalent amongst the Hindus, the elder's name appear in the wedding cards. So far as Smt. Asha Devi is concerned she used to visit to the deponent as the petitioner is widow and is all alone. The Rent Control Inspector has inspected the premises on 8th October 1998 and has found the possession of the petitioner and it was also found that her

daughter has been residing at 29 Ghosi Gali and other four daughters are married, and are residing separately, and her two sons are residing at Gurgaon. The report of the Inspector so far as the details of the family is concerned the same is quoted below:

"Prashngat sampatti 23/1 Purana 25 Naya Paltan Bazar Dehradun kaa ek bhag hai jis par avasiy suvidha me ek kamara, covered baramda avam shouchalay va bathroom bahar esthit hai. Prashngat avasity sampatti par srimati Krishna Devi patni swargiya shri Ram Kumar Srivastava ka adhyasan paya gaya. Jaanch per mokey per unki vivahit putrid smt. Asha Devi mili jinhoney bataya ki vah apne pati ke sath 29 Ghoshi Gali me rahti hai. Adhyasit kirayedar ke bare me pata chala ki unki char putriyan hai charo vivahit hain aur apne patiyon ke sath rahti hain. Unke do putra hai aur Gurgaon me dono vahin rahate hain. Srimati Krishna Devi adhiktar apen putron ke sath Gurgaon me rahati hain aur yadakada hee sampatti par aati hain.

The petitioner has also filed the copy of the Examination Hall Ticket of Central Board of Secondary Education, New Delhi relating to the year 1989 as well as the certificate. Further certificate was filed stating therein that the daughter of the petitioner has studied and has taken admission on 13th July 1976.

The R.C. & E.O. while declaring the vacancy has passed a cryptic order and has not discussed the documents filed by the petitioner. The report of the R.C.I. does not state that the petitioner is not residing in the premises in dispute but has supported the case of the petitioner that all four daughters are married, two sons are at Gurgaon and the petitioner is all alone.

The Judicial notice can be taken of the fact that when the petitioner is a widow obviously daughters only can look after the petitioner and no one else can be better person to take care of the petitioner. So far as the sons of the petitioner are concerned admittedly they are residing at

Gurgaon, the invitation card only shows the relationship of mother and sons, therefore, the invitation card has no bearing to the deeming clause as contained under Section 12 (1) of U.P. Act No.13 of 1972. 12 (1) (a), (b) and (c) reads as under:

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

The counsel for the petitioner has relied upon the judgment of Fazalur Rehman ARC, 1998(1) Page 576 as well as the judgment of Apex Court reported in 1985 (2) ARC 550 it has been held that there can not be any vacancy if another person is found in the premises unless the ingredients of Section 12 (a), (b) and (c) are satisfied. The observations of the case in Fazalur Rehman are quoted below:

> *"From the above, it is clear that by virtue of a statutory fiction, the Courts have to proceed on the assumption that building is vacant for the purpose of allotment or release as and when the state of affairs as envisaged under the above provisions are shown to exist, though physically the building may not have become vacant. These provisions appear to have been enacted with the object that while safeguarding the interest of tenants from eviction, they should not be allowed to take unnecessary benefit of the restrictions put for their eviction and the law makers thought that they should face the consequences for contravening any of the conditions prescribed in the above provisions. One of the objects of the Act is to regulate the letting by the District Magistrate. This object was likely to be defeated if he had been authorized to intervene only where the building is actually and physically vacated by the tenant. But since the authority has to proceed on the assumption created by a fiction, these provisions have to be construed very strictly. The building cannot be deemed vacant unless it has been clearly and specifically*

established from the evidence on record that the circumstances stated in one of the clauses (a) and (b) of Section 12 (1) or sub-section (2) of Section 12 of the Act have come into existence. In the absence of specific finding about the existence either of those conditions, vacancy cannot be deemed under these provisions.

For the applicability of clause (a) of Section 12 (1), the building can only be deemed to be vacant if the tenant or landlord has substantially removed his effects there from. In the present case, it would appear that while passing the impugned order the R.C. & E.O. has wrongly put the burden on the petitioner to prove that he was still occupying the building and carrying on his business therein. The mere fact that the telephone connection in the name of the petitioner has been shifted from the premises in question to another place cannot lead to a conclusive inference that the tenant has substantially removed his effects from the tenanted building. It could only be a circumstance which may be considered in deciding the question of existence of the condition as stated in clause (a) but on that mere fact a conclusion of the substantial removal of effects cannot be arrived at. While enacting clause (a) of Section 12 (1), the Legislature with some purpose and object has used the word 'substantially' before the word 'removal'. In the case of ***Dr. S.N.Ghosh Vs. R.C. & E.O.,*** *1976 A.L.J. 256, a Single Judge of this Court had the occasion to consider the expression "has substantially removed his effects" and it was observed :*

"It does not contemplate removal of some house-hold effects; on the contrary it envisages that for all practical purposes the landlord or tenant as the case may be should be found to have practically removed all his house-hold effects from the accommodation in question."

Point No.2

The counsel for the petitioner has also referred the case of the *Devendra Kumar Pandey Vs. District Supply Officer* reported in 2001 (2)

ARC 516 where it has been held that only a suit will lie in order to evict the petitioner and the petitioner can not be evicted in view of the judgment of *Nutan Kumar Vs. III Additional District Judge, Banda and others,* reported in 1993(2) ARC as well as the Judgment of Apex Court in the Nutan Kumar's Case 2002 (2) ARC 645. The facts of the case in Devendra Kumar Pandey (Supra) are distinguishable as in the present case the petitioner is contesting the case on the ground that his possession is not unauthorized and he is continuing as tenant and the provisions of Section 12 (a), (b) and (c) are not applicable to the facts of the case.

The question of vacancy has yet to become final and is subject matter in the present writ petition and as such the petitioner has every right to challenge the order of vacancy under the provisions of Rule 8(2), (3) as well as proviso to Section 16 of U.P. Act 13 of 1972. Rule 8 (1,2,3) are quoted below.

> *(1)"The District Magistrate shall, before making any order of allotment or release in respect of any building which is alleged to be vacant under section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected.*
>
> *(2) The inspection of the building, so far as possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such pasting, and if in the meantime any objection is received, not before the disposal of such objection.*
>
> *(3) Any objection under sub-rule (2) shall be decided after consideration of any evidence that the objection or any other person concerned may adduce.*

" I have meticulously scanned the decisions aforestated as also the related provisions of the Act and Rules and I am of the view that an order of allotment brought about Sans notice to the landlord or tenant, as the case may be, operates in vacuum. Rules 8 (2) and (3) as also the proviso to Section 16 (1) in fact, encompass a fact of principle of natural justice and it is well settled that an order fraught with civil consequences, if passed in breach of the principles of natural justice would operate in void."

Proviso to Section 16 is also quoted below:

[Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).]

The Apex Court in the case of Yogendra Tiwari 1984 ARC page 7 has cleaely held that there are two successive opportunities are available, therefore, the petitioner has every right to avail the opportunities. The relevant observations of Supreme Court is quoted below:

"After we heard the matter, we find the appellant having filed the revision petitions in pursuance of mandate of this Court in ***Tirlok Singh's*** *case, she cannot be left without remedy in view of* ***Ganpat Roy's*** *case (Supra). Moreover, in* ***Ganpat Roy's*** *case, this Court was considering as to whether a petition under Article 226 of the Constitution against notification of vacancy is maintainable or not. In the connection, this Court found that the notification of vacancy causes prejudice to a landlord or a tenant and since there is no equally efficacious remedy available under the Act, therefore, a petition under Article 226 is maintainable. This Court did not hold that landlord or tenant had no remedy at all under the Act.*

On examination of provisions of the Act and Rules, we find that Rule 8 (2) of the Rules provides that the inspection report of the Inspector is required to be pasted on the notice board in the office of the District Magistrate of information of the general public and after the notice is pasted, a tenant or a landlord has a right to file an objection, and if any objection is filed within three days from the date of pasting of the report, the said objection is required to be decided by the Rent Controller. It is after the said objection is decided, the vacancy is notified. Under proviso of sub-section (1) of Section 16 of the Act, the District Magistrate is further required to give an opportunity to the landlord or the tenant, as the case may, to show that there is no vacancy as contemplated under sub-section (4) of Section 12 of the Act. It is only after hearing of such objections, if filed the District Magistrate can allot the premises. Under sub-section (5) of Section 16 of the Act, the landlord or the tenant has a further right to file a review against the order of allotment if such order is not passed in accordance with clause (a) or clause (b), as the case may be, of sub-section (1) of Section 16. Any person, who is aggrieved against any final order passed under Section 16 of the Act, is entitled to file revision under Section 18 of the Act before the District Judge on grounds enumerated therein.

In view of the aforesaid provisions it cannot be said that the question of vacancy if not challenged by a separate writ petition on its notification, cannot be questioned in the revision filed under Section 18 of the Act. The question of vacancy pertains to jurisdictional facts and can very well be challenged in the revision filed against allotment order passed by the District Magistrate. In case it is found that there is not vacancy the order of allotment has to be set aside. We, therefore, feel that the decision in ***Ganpat Roy's*** *case holding that the validity of vacancy cannot be agitated in a revision under Section 18 of the Act appears to be incorrect. Since the decision in* ***Ganpat Roy's*** *case is by a three Hon'ble Judges, we feel it appropriate that this appeal be decided by Larger*

Bench. Let the record of the case be placed before the Hon'ble the CJI for appropriate orders."

"It is needless to stress that the making of an order of allotment by the District Magistrate under Section 16 (1) (a) of the Act consists of two stages. The first stage is actual vacancy of a building or a part thereof in consequence of an intimation given by the landlord or the tenant under Section 15, or a declaration of deemed vacancy of such building or part thereof under Section 12(4). It is clear from the terms of the proviso to Section 16(1) that in the case of a deemed vacancy under Section 12 (4) of the Act, the District Magistrate is required to give an opportunity to the landlord or the tenant, as the case may be, of showing that no declaration of deemed vacancy under Section 12(4) could at all be made in his case before making an order of allotment under Section 16(1) (a). The use of the word 'shall' in the proviso therefore cannot make and order of allotment under Section 16 (1) (a) on the strength of deemed vacancy under Section 12 (4) until the landlord or the tenant, as the case may be, has an opportunity of being heard in the matter. The District Magistrate is required in terms of Rule 8(2) to give an opportunity to the landlord to file his objection or make his submission, if any, to the making of an order of allotment under Section 16 (1) (a). In the case of deemed vacancy referred to in Section 12 (4), he is entitled to show that none of the clauses (a) to (c) of Section 12 (1) comes into play. The second stage is reached when there is a deemed vacancy under Section 12 (4) or actual vacancy in consequence of an intimation under Section 15."

Similar view was taken in the case of Ganpat Roy A.I.R. 1985 SC 1635 the Apex Court has held that the Act provides successive opportunities to the tenant when vacancy is deemed. The Apex Court has also observed that the Act provides sufficient opportunity to the petitioner to establish that there exists no vacancy. The observation of the Apex Court is quoted below:-

"Section 11 of the Act prohibits a person from letting any building except in pursuance of an allotment order issued under S. 16. Sub-section (2) and (4) of S. 12 provide as follows:

"(2) In the case of a non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building."

"(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or sub-section (2), or sub-section (3), sub-section (3-A) or sub-section (3-B), shall, for the purposes of this Chapter, be deemed to be vacant."

Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under S.16, Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the District Magistrate may, by an order, require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building, to any person specified in the order (called the allotment order) or may release the whole or any part of such building in favour of the landlord. Under the Proviso to S.16 (1), in the case of a vacancy referred to in S.12 (4), the District Magistrate is to give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a) of S. 16 (1), that is, before making an allotment order.

Chapter III relates to the regulation of letting. Section 11 deals with the prohibition to occupy without allotment order. Section 12 a deeming clause. Section 12 (4) provides that the District Magistrate shall given an

opportunity to the landlord or tenant, as the case may be, of showing that the said Section 16(1), is not applicable. Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16. Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the District Magistrate. The Apex Court in Ganpat Roy Vs. Addl. District Magistrate page 1635 has observed as under:

> *Under the proviso to S. 16 (1), which was inserted by the 1976 Amendment Act, the District Magistrate is required in the case of a vacancy referred to in sub-sec. (4) which includes a deemed vacancy under S. 12 (2) to give an opportunity to the landlord or the tenant, as the case may be, of showing that S. 12 (4) is not attracted to his case before he makes an order of allotment under clause (a) of S. 16 (1). Thus, this proviso, however, does not apply in the case of an order of release made……The tenant has thus no adequate or effective remedy against an order notifying a vacancy.*
>
> *In our opinion, the scheme of the Act would show that a tenant of premises in whose case it is found that there is a deemed vacancy has no efficacious or adequate remedy under the Act to challenge that finding. A petition under Art. 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature.*

The aforesaid view of the Apex Court has been relied by the Division Bench of Allahabad High Court in Sudershan Singh Bedi 1993 (1) ARC 121. The observations in Sudershan Singh Bedi (Supra) is quoted below:

> *"The declaration of vacancy by Rent Control and Eviction Officer contemplates pleadings and evidence and the Rent Control*

and Eviction Officer is invested with the power of a Civil Court in regulating the procedure for taking evidence etc. He is also to determinate the dispute after taking into account the objections raised by the parties and has to pass reasoned order.

"In Ganpat Rai V. Additional District Magistrate, AIR 1985 SC 1635: 1985 (2) ARC 75 (SC) : 1985 SCFBRC 279 (SC), considering the scheme of the Act for declaration of vacancy the Court held that before declaration of vacancy an onbjector has a right to be heard. The relevant paragraph of the case in quoted below:

> *"It equally does not appear to be correct to hold that an order notifying the vacancy did not injury and caused no prejudice to the interest of any party because on order notifying the vacancy could be objected to and if any objections were filed they would have to be decided after considering the evidence that the objector or any other person concerned might adduce and that after an order of allotment or release was passed following upon the notification of vacancy, the aggrieved person could file a review application or an appeal under Section 18. In so holding the Court appears to have overlooked the stage for objecting to a vacancy being notified was not after it was notified but as provided by Rule 8 before it was notified and that under the said Rule 8 the notification of vacancy could only be after the objections were heard and disposed of. This Court itself pointed out in that case that the Act did not provide for a hearing at the stage when the District Magistrate passed an order of allotment of lease."*

Apart from that Section 37 provides finality to the orders passed under this Act. Section 37 provides as under:

"*No order made in exercise of any power conferred by or under this Act shall be called in question in any court.*

Where an order purports to have been made and signed by exercise of any power conferred by or under this Act, a Court shall, unless the contrary is proved, presume that such order was so made by that authority."

The District Magistrate as defined under Section 3 (c) of the Act has been authorized to conduct the matters relating to Chapter III of the Act. Therefore, suit either at the instance of the landlord or the tenant is not maintainable in the cases covered under Chapter III of the Act. Chapter III read with rule 8 is a complete code, which gives successive opportunities to the landlord or the tenant. The law is well settled that if the act provides a particular mode of procedure only that procedure has to be followed and nothing else as held by the Apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and others (1999) 8 SCC 266 as well as State of Uttar Pradesh Vs. Singhara Singh and others.

The apex Court in the case of Chapter Kishore Jha Vs. Mahavir Prasad and others (1999) 8 SCC 266 observed as under:

It is well-settled salutary principle that if a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner (See with advantage : Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253 (II); Rao Shiv Bahadur Singh Vs. State of V.P. (AIR 1954 PV 322; 1954 SCR 1098; State of U.P. Vs. Singhara Singh (AIR 1964 SC 358: (1964) 1 SCWR 57).

Similar view has been taken in State of U.P. Vs. Singhara Singh and others where the judgment of English Case Law of *Taylor Vs. Taylor* has been relied the same as quoted below:

In the State of Uttar Pradesh Vs. Singhara Singh and others reported in AIR 1964 SC 358 (V 51 C 45), the apex Court has relied upon the English Case Law of ***Taylor Vs. Taylor*** *and has observed as under :*

"The rule adopted in Taylor Vs. Taylor (1878) 1 Ch D 426 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed."

The Hon'ble Supreme Court in the case of Dhanjaya Reddy Vs. State of Karnataka (2001) 4 S.C.C. 9 took the some view that where law requires a thing to be done in a certain manner it has to be done in that manner or not at all. The Court further observed that the power must be exercised in the manner provided by the statute.

In view of the aforesaid decisions of the Hon'ble Supreme Court reported in the aforesaid decision (Supra) the judgment of Devendra Kumar Pandey will not apply to the cases where vacancy is deemed under chapter III of the Act in view of the judgment of the Apex Court.

Further in view of the Judgment of Apex Court the Judgment has to be applied considering the facts of every case. The observation of the Apex Court in the case of Islamic Academy of Education Vs. State of Karnataka JT 2003 (7) SC 66 is quoted below:-

"A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal." [See ***Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others v. N.C. Budharaj (Deceased) By LRs. And Others****].*

Similar view was taken in the case of *Padmasundara Rao(Dead) & ors. Vs. State of Tamil Nadu & ors.* JT 2002(3) SC 8.

It has been held in the Apex Court as under:

"It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent."

"While interpreting a provision, the Court only interprets the law and cannot legislate is."

Point No.3

So far as the submission of the petitioner with regard to the requirement of Rule 8 of the rules framed under the Act is concerned the submission becomes only academic. The petitioner having filed his objections and, therefore, it cannot be said that the provisions of the Rule 8 (2) has not been followed. Relying upon the decision of the Division Bench of Allahabad High Court page 585 *Geep Industries Vs. Rent Control and Eviction Officer,* it has been stated in Kashi Ram Kanhaiya Lal ARC 1993(1) 585 that if full opportunity was given and objections were filed before, allotment the procedure under Rule 8 of the Rules 1972 shall be deemed to have followed.

The judgment referred by the petitioner in the case of *Rajendra Prasad Dubey Vs. First Addl. District Judge,* Alld. 1984 ARC page 254. So far as the compliance of rule 8 is concerned there is no relevancy in the present case.

Conclusion:

The R.C. & E.O. has found that the petitioner was found in possession, over the premises in dispute at the time of inspection. However, apart from the aforesaid observations made above since the petitioner is a widow it cannot be expected that there has been substantial removal from the premises or she has allowed to be occupied by any order member of the family. There is no evidence at all that she has acquired

any other accommodation. It has been held in the case of *Anandi D. Jadhav (Dead) by LR's Vs. Nirmala Ramchandra Kore* 2000 SCFBRC page 249 the observations are quoted below:-

> *"The first respondent being aged mother undoubtedly has a right to be maintained by Respondents 2 and 3 but that does not mean that she is entitled to live alone with her sons' families. The expression 'acquired vacant possession', in the contest, in our view, means acquisition of vacant possession of a suitable accommodation in which one has a right to resides. It must be legally enforceable right. The first respondent does not have any such legal right to reside in the house of Respondents 2 and 3. Though, it cannot be disputed that Respondents 2 and 3 had for a period of 30 years before building their own house lived with the first respondent as her sons and morally they are obliged to take care of aged mother by accommodating her in their house, yet in law we cannot enlarge that obligation to legal duty to provide her residence in the house along with their family."*

In my opinion, therefore, the R.C. & E.O. has passed the order without considering the relevant documents on the record. Viz, the education of the children as well as the fact that the petitioner is a widow and is residing in the premises all alone after the death of her husband. The sons are independent and are residing at Gurgaon and are not independent to the petitioner. However, there is no evidence to the effect that the sons of the petitioner are dependant on the petitioner. All these aspect of the matter requires consideration by the R.C. & E.O.

In the result the writ petition is allowed. Order passed by R.C. & E.O. dated 7.1.2002 is quashed. The matter is remanded back to the R.C. & E.O. for deciding afresh after giving opportunity to lead evidence in the light of the observations aforesaid. The matter shall be decided within a period of four months from the date of filing of the certified copy of the order.

01.09.2003 **(Rajesh Tandon, J.)**

Pradeep